

15cv0660

Revised 03/06 WDNY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORKFORM TO BE USED IN FILING A CIVIL COMPLAINT IN FEDERAL COURT  
(Non-Prisoner Context)

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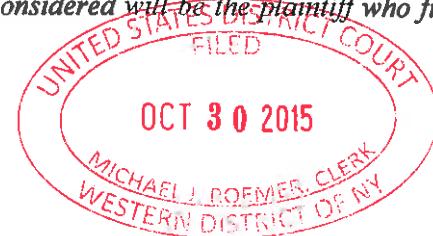
15cv0660w

1. CAPTION OF ACTION

A. Full Name of Plaintiff: NOTE: *If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application or the only plaintiff to be considered will be the plaintiff who filed an application.*

1. Stephen R. MacIntyre
2. Scott E. Sullivan

-vs-



B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption.

*The court may not consider a claim against anyone not identified in this section as a defendant. Add a separate sheet, if necessary.*

1. <u>Jack W. Moore, Supervisor, Town of Henrietta</u>	4. _____
2. _____	5. _____
3. _____	6. _____

2. STATEMENT OF JURISDICTION, VENUE and NATURE OF SUIT

*All of these sections MUST be answered*

*Identify the basis for federal Court jurisdiction over your claim, such as that the United States government is a party to the action, all the parties reside in different states and therefore you claim diversity jurisdiction, or the claim presents a federal question or arises under federal law.*

- A. Basis of Jurisdiction in Federal Court: Labor complaints against local governments are not within jurisdiction of New York State. Claim alleges violation of the Fair Labor Standards Act requiring Federal Court jurisdiction.
- B. Reason for Venue in the Western District: Jack M. Moore is the Supervisor of the Town of Henrietta, a local government located in Monroe County.
- C. Nature of Suit: Violation of Fair Labor Standards Act and Employee Retirement Income Security Act

**3. PARTIES TO THIS ACTION**

**PLAINTIFF'S INFORMATION** **NOTE:** *To list additional plaintiffs, use this format on another sheet of paper.*

Name of First Plaintiff: Stephen R. MacIntyre

Present Address: 43 Ivory Way, Henrietta, New York 14467

Name of Second Plaintiff: Scott E. Sullivan

Present Address: 274 Gorham Street, Canandaigua, NY 14424

**DEFENDANT'S INFORMATION** **NOTE:** *To list additional defendants, use this format on another sheet of paper.*

Name of First Defendant: Jack W. Moore

Official Position of Defendant (if relevant): Supervisor, Town of Henrietta

Address of Defendant: 475 Calkins Road, Henrietta, New York 14467

Name of Second Defendant:

Official Position of Defendant (if relevant):

Address of Defendant:

Name of Third Defendant:

Official Position of Defendant (if relevant):

Address of Defendant:

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**4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT**

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes        No  X  

If Yes, complete the next section. **NOTE:** *If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): \_\_\_\_\_

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Defendant(s): \_\_\_\_\_

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2. Court (if federal court, name the district; if state court, name the county): \_\_\_\_\_

3. Docket or Index Number: \_\_\_\_\_

4. Name of Judge to whom case was assigned: \_\_\_\_\_

5. The approximate date the action was filed: \_\_\_\_\_

6. What was the disposition of the case?

Is it still pending? Yes  No

If not, give the approximate date it was resolved.

Disposition (check those statements which apply):

Dismissed (check the statement which indicates why it was dismissed):

By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

plaintiff

defendant.

### **5. STATEMENT OF CLAIM**

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, just tell the story of what happened and do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

**FIRST CLAIM:** On January 23, 2015 Jack W. Moore, Supervisor of the Town of Henrietta terminated our positions as Engineering Inspectors as a result of a 2013 Financial Management Examination by the Office of the NYS Comptroller. That report stated that we were "misclassified" contract workers being used by the Town to fulfill the role of town employees, citing that we "did not meet the majority of the 20 common law criteria for classification as independent contractors, and should likely have been treated as employees".

*(briefly state what each defendant named above did):*

Plaintiffs believe that through termination, the defendant was seeking to avoid paying a standard civil service wage and benefit entitlement and denied the plaintiffs the opportunity to participate in the NYS State Retirement Program.

After termination, Plaintiffs engaged Cordello Law PLLC to provide a legal response to the Town of Henrietta. In a letter of March 11, 2015, the violations to the FLSA and ERISA were listed and requested a settlement of \$232,758.44 for lost wages, overtime compensation and benefits over a period of three years. Negotiations were ended when the Town considered themselves exempt from the FLSA.

The federal basis for this claim is: FLSA does have jurisdiction over municipal and local governments and provides an economic realities test, as a means to determine “contract worker” vs. employee.

State briefly **exactly** what you want the Court to do for you. *Make no legal arguments and cite no cases or statutes:*  
We request the Court to determine the legitimacy that we were employees as indicated by the FLSA and enforce the claim of lost wages, benefits and overtime compensation for a period of three years as listed in the Cordello letter of March 11<sup>th</sup> 2015.

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**A. SECOND CLAIM:** On *(date of the incident)*

defendant *(give the name and (if relevant) position held of each defendant involved in this incident)*

did the following to me *(briefly state what each defendant named above did):*

The federal basis for this claim is:

State briefly **exactly** what you want the Court to do for you. *Make no legal arguments and cite no cases or statutes:*

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**If you have additional claims, use the above format to set them out on additional sheets of paper.**

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**6. SUMMARY OF RELIEF SOUGHT**

*Summarize the relief requested by you in each statement of claim above:*

Plaintiffs are requesting monetary damages to recover lost wages, benefits and legal fees.

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Do you want a jury trial? Yes X No       

**I declare under penalty of perjury that the foregoing is true and correct.**

Executed on: October 30, 2015

**NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.**

Stephen R. McElroy  
Scottee, McElroy

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Signature(s) of Plaintiff(s)